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EXAMINER				
REICHLE, KARIN M				
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3761				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/773,160

**Applicant(s)**

COATES, FREDRICA V.

**Examiner**

Karin M. Reichle

**Art Unit**

3761

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-22, 24-27, 29-31 and 34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-22, 24-27, 29-31 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 August 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11-06-08 has been entered. See however discussion in paragraph 2.

### ***Response to Amendment***

2. The amendment filed 1-19-08 is accepted. However, the claims listing still does not comply with 37 CFR 1.121 because such does not include a complete listing of the claims in order with parentheticals, i.e. does not list claims 9-16 with the parenthetical "cancelled" after the listing of claim 8. The next response, if any, must include a claims section in compliance with 37 CFR 1.121, i.e. list claims 1-19 with the parenthetical , i.e. "Claims 1-19(Cancelled)".

### ***Specification***

#### ***Drawings***

3. The drawings were received on 8-28-08 and another copy was received on 11-6-08-08. These drawings are approved by the Examiner. Note the Advisory Action of 9-26-08.

***Claim Rejections - 35 USC § 112***

4. Claim 34 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. New claim 34 requires the second part initially include a rectangular piece of material, wherein triangular portions near corners of the rectangular piece of material have been removed and remaining adjacent sides have been stitched together to form the pocket and an outer edge of the pocket covered by an elastic strip. While the originally filed specification, e.g., Figures 1D-G, teach a pocket which is formed from a rectangular piece of material from which triangular corner portions have been removed, the adjacent edges created by such removal are directly stitched together to form a pocket having an opening whose edge is then covered by an elastic strip, this is not what is claimed. If Applicant maintains the claim language the specific portion of the original specification which provides support for the entire scope of such claim in a single embodiment should be set forth. See also the discussion in subsequent paragraph 5.

***Claim Language Interpretation***

5. No claim terminology has been explicitly defined. Therefore the claim terminology will be interpreted according to its usual, e.g., dictionary, definition. It is noted that the language of claim 20, lines 7-8 is interpreted to require non-monolithically formed layers. It is further noted that such is considered to recite the same structure as previously presented on lines 3-7. The terminology “adjacent” as defined by the dictionary is “Close to, lying near”. Therefore, it

is noted that the terminology “adjacent”, absent claiming of specific distances, is considered relative. Claim 34 is considered a product by process claims, see MPEP 2113, i.e. "[E]ven though product- by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695,698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). Additionally see the discussion in paragraph 4 supra as well as 2163.06, I and note that claim 34 does not explicitly claim how the remaining sides are stitched to form the pocket, e.g. does not require direct stitching of the cut edges formed by cutting the triangular portions. Therefore the end product of claim 34 is considered a pocket with sides that have been stitched together in some manner and an outer edge having an elastic strip covering it.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 20-21, 24-27 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernard '983 in view of Wyant '065 and Siudzinski '649.

Claims 20 and 21: See Claim Language Interpretation section supra hereinafter also referred to as CLI and Figures 7-9, and note the blow-ups of Figure 9 in Appendix A attached to this action, col. 1, line 55-col. 2, line 6, col. 2, lines 14-31 and col. 3, lines 23-43, i.e. the first

part/outer layer is the outer layer of 15a, the first part/anchor layer is the inner layer of 15a, the stitching is 17. The outer layer and anchor layers are separate fabrics layers, the former shaped to conform to a buttock and leg region of the user, see Figures, and the latter having a shape conforming to that of the former. The second part/pocketed sling is 53 which includes four sides and is detachably coupled to the anchor layer but not directly detachably coupled to the outer layer, i.e. only indirectly so coupled, by releasable fasteners which are snap fasteners of two portions 51, 52 located respectively on the anchor layer and sling, see blow up in Appendix A, col. 2, line 7 and col. 3, line 21, elements 20-21 as shown in Figure 2, col. 3, lines 31 and 36-41 and elements 20a, 21a, 50-51 as seen in Figures 7-9. The sling extends from the anchor layer on the inner side of the undergarment when the undergarment is worn to form a pocket for retaining a fluid absorbent pad, i.e. diaper D, facing inwardly away from the anchor layer. The sling is displaced inwardly from corresponding sides toward the center of the anchor layer and inwardly from the stitches between the anchor layer and the outer layer at, e.g., 7b, 7c, 8b, and 8c. It is noted that the entire periphery/all portions of all four sides of the sling is/are not required to be so inwardly displaced from the entire periphery of the anchor layer. However also note the position of 31 in Figure 3 and the position of 51 and 52 in Figures 7-9 with regard to stitching 17. The outer layer overlies fasteners on the anchor layer, e.g. 20a, 21a, 50 and/or 52. Claim 20 now requires the outer layer completely overlying the releasable fasteners. While the outer layer overlies a portion of the fasteners 51, 20a, 21a which are on the inside thereof and fasteners 52 when the garment is unfastened and overlies completely some fasteners, e.g. 20a, when the garment is fastened, see Figure 1, such layer does not appear to completely overlie the fasteners on the anchor layer. Claim 21 further requires the fasteners be filamentary fasteners while '983

teaches cooperating snap fasteners. However, see '065 at Figure and col. 3, lines 19-23 and '649 at Figure and col. 6, lines 20-22. To make the cooperating snap fasteners for fastening components of an absorbent undergarment together of '983 cooperating filamentary fasteners, i.e. VELCRO, instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by '065 and '649. In so doing the prior art combination also teaches fasteners on the anchor layer which are necessarily and inevitably completely overlaid by the outer layer.

Claim 24: The releasable fasteners 51 on the anchor layer are located only "adjacent", see CLI, opposite ends of the pocketed sling, i.e. located between but only "adjacent" opposite terminal ends, i.e. both lateral and longitudinal, of the sling layer, see Figures 7-9. It is noted that extent of the ends relative to overall longitudinal and lateral extent of the sling has not been set forth.

Claim 25: The releasable fasteners on the anchor layer are located between opposite ends of the pocketed sling, see discussion of claim 24.

Claim 26: The anchor layer is attached to the outer layer "adjacent", see CLI, opposite ends of the outer layer, see 17 in Figures.

Claim 27: The pocketed sling is attached to the anchor layer "adjacent" to, see CLI, but spaced from the opposite ends of the outer layer where the anchor layer is attached to the outer layer, see discussion of claims supra, i.e. the sling is attached inwardly from corresponding sides toward the center of the anchor layer and inwardly from the stitches between the anchor layer and the outer layer at, e.g., 7b, 7c, 8b, and 8c. Note the position of 31 in Figure 3 and the position of 51 and 52 in Figures 7-9 with regard to stitching 17.

Claim 29: The anchor layer is attached to the outer layer only “adjacent”, see CL1, peripheral edges of the anchor layer and the outer layer, see discussion of claim 26 supra.

Claim 30: The anchor layer is attached to the outer layer around the entire periphery of the anchor layer, i.e. see stitching 17 in Figure 7.

Claim 31: The pocketed sling is attached to the anchor layer inwardly from peripheral edges of the outer layer, i.e. see discussion of claim 20, i.e. the sling layer is displaced inwardly from corresponding sides toward the center of the anchor layer and inwardly from the stitches between the anchor layer and the outer layer at, e.g., 7b, 7c, 8b, and 8c. It is noted that the entire periphery/all portions of all four sides of the sling layer is/are not required to be so inwardly displaced from the entire periphery of the anchor layer. However also note the position of 31 in Figure 3 and the position of 51 and 52 in Figures 7-9 with regard to stitching 17.

8. Claims 20, 22, 24-27 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernard ‘983 in view of Siudzinski ‘649, Thompson ‘124 and Stevens ‘598.

See discussion of claims 20 and 24-27 and 29-31 supra. Claim 22 further requires the fasteners be snap fasteners. While ‘983 teaches cooperating snap fasteners it does not teach such completely overlaid by the outer layer. However, see ‘649 at Figure 6 (Note the snap fasteners are shown in dotted lines when viewed from the outside) and col. 6, lines 20-22, Thompson ‘124 at the Figures (Note again the snap fasteners are shown in dotted lines when viewed from the outside) and Stevens ‘598 at Figures 19A-19C. To make the cooperating snap fasteners for fastening components of an absorbent undergarment together of ‘983 cooperating snap fasteners which are completely overlaid by an outer layer instead such as, for example, taught by ‘649, ‘1243 and ‘598 would either be obvious in view of In re Siebentritt, 54 CCPA 1083, i.e. two



equivalents are interchangeable for the desired function, express suggestion of desirability not needed to render such substitution obvious, i.e. here the equivalents are interchangeable for the desired function of cooperative fastening, or be obvious to one of ordinary skill in the art in view of the recognition that such would be more aesthetic and/or safer, e.g. can't catch on anything, and the desirability of such features in any garment. Note also col. 1, lines 20-22 of '983. In so doing, the prior art combination also teaches fasteners on the anchor layer which are necessarily and inevitably completely overlaid by the outer layer.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernard '983 in view of Wyant '065 and Siudzinski '649 or Bernard '983 in view of Siudzinski '649, Thompson '124 and Stevens '598 as applied to claim 20 above, and further in view of Alsop '604 and Brownlee '422.

Claim 34, see CLI supra, requires a pocket with sides that have been stitched together in some manner and an outer edge having an elastic strip covering it. While ''983 teaches a pocket with sides that have been stitched together in some manner, see discussion of claims supra and stitching in Figure 8, it does not teach an outer edge of the pocket having an elastic strip covering it. However, it is well known, see, e.g. '604 and '422, to employ an elastic strip covering some surface of a portion of the outer edge, e.g. 31 in Figure 6a of '604 or col. 2, lines 41-45 and Figures of '422, of an pocket in order to better fit such edge to the wearer promoting better liquid/fluid containment or leakage prevention and the desirability of such containment in any diaper garment.

***Response to Arguments***

10. Applicant's remarks have been carefully considered but are either deemed moot in that the issue/rejection addressed has not been reraised or deemed not persuasive for the reasons set forth supra. Specifically, Applicants remarks are not commensurate in scope with the claim language and the teachings of the prior art as set forth supra, i.e. narrower than the claim language and/or teachings. It is noted that arguments with regard to prior art combinations applied were not presented, only Bernard was argued. Furthermore, any request for interview should be made by telephone or in a separate communication clearly identified as such a request.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Karin M. Reichle/  
Primary Examiner, Art Unit 3761

January 29, 2008

**Appendix A**

**FIG. 9.**





